

JUN - 3 2010

FCC Mail Room

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554-0005**

In the Matter of	)	
	)	
Digital Audio Broadcasting Systems	)	
And Their Impact on the Terrestrial	)	MM Docket No. 99-325
Radio Broadcast Service	)	

To: The Commission

**MOTION TO STRIKE**

1. My name is Jonathan E. Hardis, and on April 8, pursuant to § 1.115 of the Commission's rules, I applied for review of an Order adopted by Media Bureau under delegated authority in the above captioned proceeding.<sup>1-2</sup> Oppositions to the *Application for Review*, if any, were required under the Commission's rules [§ 1.115(d)] to be filed by Friday, April 23.

2. Notwithstanding the fact that my *Application for Review* was fully briefed a month ago, on May 25 iBiquity Digital Corporation (iBiquity) filed an "Opposition" to it.<sup>3</sup> iBiquity neither requested nor received leave to file a surreply in this matter, and therefore this pleading is not authorized under Commission rules. I respectfully request that it be stricken from consideration.<sup>4</sup>

<sup>1</sup> DA 10-208, Adopted January 27, 2010, Released January 29, 2010. Electronically at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-10-208A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-10-208A1.pdf). Hereinafter, the "Order." See also 75 FR 17874, April 8, 2010.

<sup>2</sup> Application for Review of Jonathan E. Hardis ("*Application for Review*"), April 8, 2010, MM Docket No. 99-325; at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020408278>.

<sup>3</sup> Opposition of iBiquity Digital Corporation ("*Opposition*"), May 25, 2010, MM Docket No. 99-325, electronically at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020492310>.

<sup>4</sup> On April 22, 2010, via letter to Ms. Marlene H. Dortch, Secretary of the Commission, iBiquity requested an extension of time to file an opposition. <http://fjallfoss.fcc.gov/ecfs/document/view?>

3. iBiquity's *Opposition* also covered other applications for review and petitions for reconsideration that pertained to the same Media Bureau Order and which were subsequently filed. While this 12-page pleading nominally opposes six different filings before the Commission (three applications for review) and Media Bureau (three petitions for reconsideration), in fact approximately 5 pages of it are seen to specifically and uniquely oppose my *Application for Review*. An additional 3 pages of it are seen to specifically and uniquely oppose petitions for reconsideration that have been filed. This raises an additional concern. Under Commission rules, "[w]hen a petition for reconsideration is timely filed in proper form, public notice of its filing is published in the FEDERAL REGISTER. ***The time for filing oppositions to the petition runs from the date of public notice.***" [§ 1.429(e), emphasis added.] Furthermore, "[o]ppositions to a petition for reconsideration shall be filed within 15 days ***after*** the date of public notice of the petition's filing." [§ 1.429(f), emphasis added.] With respect to the petitions for reconsideration, no Federal Register notices have yet been published, and iBiquity's *Opposition* is incurably premature. Recent precedent is to enforce this point strictly.<sup>5</sup> In all, less than a third of this pleading could be in accordance with the Commission's rules.<sup>6</sup>

4. For completeness, I should point out that the Commission is also in receipt of new *ex parte* "Comments" filed by the National Association of Broadcasters (NAB).<sup>7</sup> But for the title of "Comments," in substance this filing constitutes opposition to five of the six filings that

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id=7020410081 Their motion was untimely and contained no justification beyond statements that they disagreed with the Commission's rules and wanted to do things their way. Out of thin air, and with a faulty premise, they invented a scheme that allowed them thrice the normally allotted time to file an opposition. I immediately opposed this extraordinary motion. <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020417607> The Commission, wisely, did not grant their request.

<sup>5</sup> See, e.g., DA 10-599 and DA 10-600.

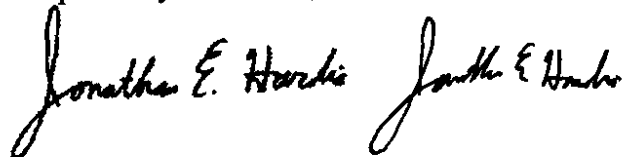
<sup>6</sup> Whether or not the Commission grants iBiquity leave to refile its opposition to the two remaining applications for review is not my concern.

<sup>7</sup> Comments of the National Association of Broadcasters, May 25, 2010, MM Docket No. 99-325, electronically at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020492267>.

iBiquity addressed. NAB neither requested nor received any extension of time, or leave to file a surreply, with respect to my *Application for Review*. Under the Commission's liberal *ex parte* rules, NAB is entitled to have its opinions made known and recorded. However, they are not entitled to any weight in the consideration of the various applications for review.<sup>8</sup> Commission rules prescribe procedures for filing oppositions and replies that provide fairness, finiteness, transparency, and predictability to all concerned parties. NAB appears to be attempting to circumvent the Commission's rules, and therefore their ambiguous "Comments" must be ignored.

5. In summary, my *Application for Review* has been fully briefed, including opposition by competent counsel for NPR and reply that answered all of his substantive concerns. iBiquity has no grounds to begin another, repetitive pleading cycle, nor do they attempt to justify one beyond their feeble and failed motion for extension of time. Accordingly, their "Opposition" must be stricken, and the Commission should continue its consideration of the important issues I have raised before it.

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan E. Hardis". The signature is written in a cursive, flowing style.

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Dated: May 27, 2010

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<sup>8</sup> NAB will have an opportunity later to oppose the petitions for reconsideration after the publication of a Federal Register notice, should the Commission decide that they are timely, in proper form, and not mooted by any prior decision that the Commission is entitled to make.

**CERTIFICATE OF SERVICE**

I, Jonathan E. Hardis, hereby certify that true and correct copies of the foregoing *Motion to Strike* were sent this 27<sup>th</sup> day of May, 2010, via the ECFS and first class mail, postage prepaid, to:

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